

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANGEL UGALDE,

Petitioner,

-against-

CVS PHARMACY, INC and 251 EAST 51ST STREET
CORP.

Respondent.
-----X

**PETITION FOR
REMOVAL**

**Jury trial demanded
ECF case**

Docket No.:

Respondent, CVS ALBANY LLC i/s/h/a CVS PHARMACY, INC (hereinafter “CVS”) petitions for the removal of this action from the Supreme Court of the State of New York, County of Queens, to the United States District Court, Eastern District of New York, respectfully shows this Honorable Court:

FIRST: Angel Ugalde (“Petitioner”) commenced an action against the above-named respondent in a Civil Action brought against it in the Supreme Court of the State of New York, County of Queens, entitled:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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ANGEL UGALDE

Plaintiff,

-against-

CVS PHARMACY, INC. and 251 EAST 51ST STREET
CORP.

Defendant.
-----X

Index No. 707687/2021

A copy of the Summons and Complaint in this action is annexed hereto as ***Exhibit*** “A” and made a part hereof. That CVS interposed an Answer to the Complaint on or about

April 26, 2021 (a copy of CVS' Answer is annexed hereto as ***Exhibit "B"***). 251 EAST 51ST STREET interposed a Verified Answer to the Summons and Complaint on or about May 27, 2021. (a copy of 251 EAST 51ST STREET' Answer is annexed hereto as ***Exhibit "C"***). Plaintiff served his Bill of Particulars responsive to CVS' demands and to 251 EAST 51ST STREET demands on August 18, 2021, and August 17, 2021, respectively. (The Bills of Particulars are annexed hereto collectively as ***Exhibit "D"***). This firm substituted as counsel for 251 EAST 51ST STREET on March 2, 2022 (a copy of the Notice of Substitution is annexed hereto as ***Exhibit "E"***). This firm filed a Motion to dismiss the action as against 251 EAST 51ST STREET on March 2, 2022 (a copy of the Notice of Motion and Affirmation in Support is annexed hereto as ***Exhibit "F"***). The Motion to Dismiss was initially made returnable on March 21, 2022, but has since been adjourned by the Court until May 3, 2022. This firm has not received opposition to the motion to dismiss the complaint as against 251 EAST 51ST STREET. Upon information and belief, the foregoing constitutes all process, pleadings, and orders allegedly served upon party in this action.

SECOND: This is an action of civil nature in which the District Courts of the United States have been given original jurisdiction in that there exists diversity of citizenship between the respondent and the petitioner and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interests and costs. Accordingly, jurisdiction exists in the District Court of the United States as provided for by 28 U.S.C. §1332.

THIRD: Under the provision of 28 U.S.C. §1441, the right exists to remove this civil action from the Supreme Court of the State of New York, County of Queens to the United States District Court for Eastern District of New York, which embraces the

place where this action is pending. In his complaint, Petitioner sought judgment as a result of personal injuries allegedly sustained on February 5, 2021 at the CVS Pharmacy located at 969 2nd Avenue, New York, New York.

FOURTH: The action involves a controversy between citizens of different states. Petitioner is and was, at the commencement of the action, a citizen of New York State, Queens County. The Respondent, CVS Albany, LLC, is a Domestic Limited Liability Company with its sole member being CVS Pharmacy, Inc. CVS Pharmacy, Inc. is a Rhode Island Corporation with its principal place of business at One CVS Drive, Woonsocket, Rhode Island 02895. 251 EAST 51ST STREET CORP. is a Domestic Business Corporation with its principal place of business being in New York, New York. However, on March 2, 2022 a Motion to Dismiss the complaint in its entirety as against 251 EAST 51ST STREET CORP. was filed, has been unopposed to date, and it is expected that the motion will be granted in its entirety. Considering this, CVS respectfully submits that there is full diversity and this Petition to Remove should be granted.

FIFTH: Upon information and belief, Petitioner's alleged amount in controversy will be claimed to exceed the \$75,000.00 threshold. Petitioner's Complaint did not specify the amount of damages because under NY State CPLR Section 3017(c), a plaintiff in a personal injury matter in the Supreme Court of the State of New York is not permitted to assert the damages amount in the Complaint.

SIXTH: In his Complaint and Bill of Particulars, Petitioner alleges to have sustained serious and permanent injuries as a result of a trip and fall accident at the subject CVS Pharmacy. Specifically, Plaintiff claims to have developed supraspinatus tendinosis

in his left shoulder and a sprain in his left wrist. While Petitioner's claims are expressly denied by CVS, if the Petitioner's allegations are proven, the claimed amount in controversy could exceed \$75,000. Accordingly, there exists original jurisdiction in the District Courts of the United States as provided in 28 U.S.C. Section 1332.

SEVENTH: The instant petition is being filed within thirty days of learning that the amount in controversy is claimed to exceed the Federal Court's jurisdictional limit in accordance with Fed. R. Civ. P. Section 1446(b). This action is also being removed within a year of commencement of the Action pursuant to Fed. R. Civ. P. Section 1446(b). No party to this action will be prejudiced by removing the Action.

EIGHTH: In accordance with the requirements of 28 U.S.C. § 1446, CVS attaches herewith and incorporates herein by reference copies of the following items served in this action:

- a. Petitioner's Summons and Complaint against CVS for damages filed in the Supreme Court of the State of New York, County of Queens bearing Index Number 707687/2021 (*Exhibit "A"*)
- b. Answer of CVS (*Exhibit "B"*)
- c. Answer of 251 EAST 51ST STREET CORP (*Exhibit "C"*)
- d. Bills of Particulars to CVS and 251 EAST 51ST STREET CORP (*Exhibit "D"*)
- e. Notice of Substitution (*Exhibit "E"*)
- f. Notice of Motion to Dismiss with Affirmation in Support (*Exhibit "F"*).

NINTH: By reason of the forgoing, the respondent desires and is entitled to have this action removed from the Supreme Court of the State of New York, County of Queens

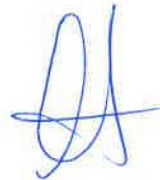
to the United States District Court for the Eastern District of New York, such being the district where this suit is pending.

TENTH: Concurrent with the filing of service and petition for removal, CVS is serving this petition for removal upon Petitioner's attorney, and filing a copy of this petition for removal with the Clerk of the Court for the Supreme Court of the State of New York County of the Queens.

WHEREFORE, respondents, CVS ALBANY, LLC and CVS PHARMACY, INC. pray that the above entitled action now pending against it in the Supreme Court of the State of New York, County of Queens be removed there from that Court.

Dated: New York, New York
March 11, 2022

By:



ERIN R. FROST, ESQ.
CULLEN AND DYKMAN
Attorneys for Respondents
CVS ALBANY LLC i/s/h/a CVS PHARMACY
INC
44 Wall Street
New York, New York 10005
(212) 701-4169
File No: 23000-145

To: Law Office of Neil Moldovan, PC
Attorney for Plaintiff
900 Stewart Avenue, Suite 220
Garden City, New York 11530
Via E-mail: neil@neilmoldovanlaw.com